

## **Item SPR05-41 Response Form**

**Title:** Probate: Discharge of Court-Appointed Fiduciaries in Decedents' Estates, Conservatorships, and Guardianships (adopt form DE-295/GC-395)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Monday, June 20, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

## Invitation to Comment (SPR05-41)

Title	Probate: Discharge of Court-Appointed Fiduciaries in Decedents' Estates, Conservatorships, and Guardianships (adopt form DE-295/GC-395)
Summary	The proposed new mandatory form, <i>Ex Parte Petition for Final Discharge and Order</i> (form DE-295/GC-395) would provide a uniform application and order for the final discharge of personal representatives of decedents' estates and conservators and guardians of the estates of conservatees and minors, upon satisfactory completion of their fiduciary responsibilities.
Source	Probate and Mental Health Advisory Committee, Hon. Don Edward Green, Chair
Staff	Douglas C. Miller, Committee Counsel, 415-865-7535, douglas.miller@jud.ca.gov
Discussion	<p>The court must, on ex parte petition, order the discharge of the personal representative of a decedent's estate when the fiduciary has complied with the order of final distribution in the estate, and has filed the appropriate receipts or the court has excused their filing.<sup>1</sup> The order for final discharge releases the personal representative and the sureties on the representative's bond from liability for acts occurring after the date of the order.</p> <p>Probate Code section 2100 makes this procedure applicable to conservators or guardians of the estates of conservatees or wards upon completion of their administration.</p> <p>There are currently no Judicial Council form petitions and orders for the discharge of personal representatives, conservators, and guardians. Some courts have developed local forms for this purpose, with considerable variation in their content and appearance.</p> <p>Local forms refer to the application for discharge variously as a petition, application, affidavit, or declaration. The proposed Judicial Council form would adopt the term "petition" because the Probate Code sections that provide for the discharge application and order use that word and the term is broad enough to include routine applications.<sup>2</sup> The form would, however, require the petitioner's</p>

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<sup>1</sup> Probate Code section 12250(a).

<sup>2</sup> See Probate Code sections 11753(b) and 12250(a).

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signature only once under penalty of perjury, as for a declaration, rather than once in the body of the petition and again in a separate verification, as is customary for probate petitions.<sup>3</sup>

The new form would refer to distributions of estate property as distributions or “transfers,” the recipients as distributees or “transferees,” and the orders authorizing the distributions as orders for distribution or “liquidation.” The quoted terms are used in Probate Code section 2631, which authorizes the liquidation of a small conservatorship or guardianship estate following the death of the ward or conservatee, and the transfer of estate assets to the successors in interest of the deceased ward or conservatee.

Item 2f of the form would require a guardian of the estate petitioning for discharge to specify the date the former minor attained the age of majority. This requirement is a response to Probate Code section 2627, which provides that—except as otherwise provided by law, such as when the minor dies or the estate is distributed to a successor guardian—the guardian is not eligible for discharge until a year after the former minor reaches his or her majority.

The new form would require a petitioner to specify the dates of all distribution or liquidation orders filed in the proceeding and attach to the petition conformed copies of the orders and all previously-filed receipts for distribution. These requirements are intended to speed completion of the fiduciary’s discharge and ease the burden on court staff, who must check the court file to examine all distribution orders and previously filed receipts. That check would still be necessary after adoption of the form, but the process should be more accurate and less time consuming if the dates of distribution orders are stated in the petition—particularly orders for preliminary distributions that might have been filed months or years before completion of administration—and copies of the orders and previously-filed receipts are attached to the form.

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<sup>3</sup> A hand-drafted probate pleading, including a petition, would ordinarily be signed by all parties joining in the pleading and then signed again by at least one party in a separate verification. (See Prob. Code, § 1020 and Cal. Rules of Court, rule 7.103.) The last sentence of Probate Code section 1020 says, however, that signing a verification of a document is signing that document, unless otherwise expressly provided. Signing a document under penalty of perjury is the equivalent of signing a verification of that document. (See Code Civ. Proc., §§ 446, 2015.5.)

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The Probate Code and the California Rules of Court are silent on these requirements. These authorities neither specify them nor prohibit courts from imposing them. Some courts have local rules that enforce them.<sup>4</sup>

Members of the public, including judicial officers, probate department staff, and probate practitioners, are invited to comment concerning the potential benefits and burdens of requiring the dates of all distribution orders to be stated in the form and requiring the attachment of copies of such orders and previously filed receipts to the form, and whether a rule of court expressly imposing these requirements would be appropriate or advisable.

A copy of the proposed new form DE-295/GC-395 is attached at page 4.

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Attachment

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<sup>4</sup> See, for example, rule 14.101 of the Superior Court of San Francisco County Local Rules.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):   TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT 4</b>  <b>03/15/05</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b>  STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
<input type="checkbox"/> ESTATE <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF (Name): _____ <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR	
<div style="display: flex; justify-content: space-between;"> <div><b>EX PARTE PETITION FOR FINAL DISCHARGE AND ORDER</b></div> <div>CASE NUMBER: _____</div> </div>	

1. Petitioner is the ☐ personal representative ☐ conservator ☐ guardian of the estate of the above-named decedent, conservatee, or minor. Petitioner has distributed or transferred all property of the estate as required by the final order ☐ and all preliminary orders for distribution or liquidation filed in this proceeding on (specify date each order was filed):

A conformed copy of each order is attached on Attachment 1.

2. All required acts of distribution or liquidation have been performed as follows (check all that apply):

- a. ☐ All personal property, including money, stocks, bonds, and other securities, has been delivered or transferred to the distributees or transferees as ordered by the court. The receipts of all distributees or transferees are now on file or are filed with this petition. Conformed copies of all receipts previously filed are attached on Attachment 2.
- b. ☐ No personal property is on hand for distribution or transfer.
- c. ☐ Real property was distributed or transferred. The order for distribution or transfer of the real property; the personal representative's, guardian's, or conservator's deed; or both were recorded as follows (specify documents recorded, dates and locations of recording, and document numbers or other appropriate recording information):
  
- d. ☐ No real property is on hand for distribution or transfer.
- e. ☐ No receipts are required because Petitioner is the sole distributee.
- f. ☐ The minor named above attained the age of majority on (date):

3. Petitioner requests discharge as personal representative of the estate, conservator of the estate, or guardian of the estate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME OF PETITIONER)

\_\_\_\_\_  
(SIGNATURE OF PETITIONER)

### ORDER FOR FINAL DISCHARGE

**THE COURT FINDS** that the facts stated in the foregoing *Ex Parte Petition for Final Discharge* are true.

**THE COURT ORDERS** that (name):

is discharged as ☐ personal representative ☐ conservator ☐ guardian of the estate of the above-named decedent, minor, or conservatee, and sureties are discharged and released from liability for all acts subsequent hereto.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT.

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